IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25013 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TEJVIR PARK COOPERATIVE HOUSING SOCIETY LTD - Petitioner(s)

Versus

NARSINHBHAI RAMJIBHAI MAKWANA & 4 - Respondent(s)

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Appearance :

MR VH DESAI for Petitioner(s) : 1,
MR MA PAREKH for Respondent(s) : 2 - 3.
MR SIRAJ GORI AGP for Respondent(s) : 4,
MR MAULIN R RAVAL for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 31/07/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Desai seeks permission to delete respondent no.1. Permission granted. Learned advocate Shri A.H.Shah wavies service of rule on behalf of respondent nos. 2 and 3. Learned Asst. Government Pleader Shri Gori wavies service of rule on behalf of respondent no.4 and learned advocate Shri Raval for respondent no.5.

2. I have heard learned advocates appearing for the parties. The petitioner challenges an order dated 25th November, 2005 passed by the Co-operative Tribunal in Revision Application No.276/05 filed by respondent nos. 2 and 3 herein.

3. The petitioner as a society objects to respondent nos. 2 and 3 herein from running a school in the constructed building on a plot belonging to the petitioner society. A Lavad Case No.607/05, therefore, came to be filed by the petitioner society seeking to prevent the said respondents from continuing with the activity of running a school. An

interim injunction application was also filed. Board of Nominees, therefore, by order dated 21/6/2005 granted partial injunction provided that the respondent nos. 2 and 3 herein shall not use the tenament situated in plot no.38 for any other use than residential use. It was also provided that they shall not permit parking of the cycles and other vehicles on the society road, margin land or common plot. Aggrieved by the said order passed by Board of Nominees on 21/6/2005 the respondent nos. 2 and 3 preferred a revision application before the Co-operative Tribunal. The Tribunal by its impugned order dated 25/11/2005 allowed the revision application and set aside the order passed by the Board of Nominees.

4. Having heard learned advocates appearing for the parties, I find that apparently the school has been functioning from the said premises since the year 2001. The society approached the Board of Nominees in the year 2005. Learned advocate for the petitioner also stated that there is yet another school functioning from the society premises though

action is sought to be initiated against the said school also. Considering all these aspects of the matter, I find that the Board of Nominees was not justified in passing the order of injunction as prayed for by the petitioner. The Tribunal, therefore, committed no error in setting aside such a order.

5. The grievance of the petitioner that running a school should be in any case should not cause any in-convenience to the members of the society is justified. The direction of the Board of Nominees regarding the respondent nos. 2 and 3 not permitting parking of cycles or any vehicles on the road, margin land or the common plot of the society, therefore, needs to be upheld.

6. In the result the petition is allowed in part. In so far as the order of the Co-operative Tribunal interfering with the order of Board of Nominees preventing the respondent nos. 2 and 3 from utilizing tenement no.38 for any purpose other than the residential purpose is concerned, the same is

confirmed. Interference of the Tribunal in the other direction issued by the Board of Nominees regarding non-parking of the cycle and vehicles as mentioned above is modified. The order passed by the Board of Nominees in this regard is reinstated, order passed by the Tribunal stands modified to this extent. The Board of Nominees is requested to expedite the pending proceedings and endevour to dispose of the same expeditiously and preferably within a period of six months from the date of receipt of a copy of this order. Both sides shall co-operate with the earlier conclusion of the pending lavad suit.

7. With these directions, the petition is disposed of. Rule is made absolute to the above limited extent. No costs.

(Akil Kureshi, J.)

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